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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,899	04/12/2001	Jean-Marc Balloul	032751-052	1686

7590 11/08/2006

Norman H. Stepno
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

BOESEN, AGNIESZKA

ART UNIT PAPER NUMBER

1648

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,899

Applicant(s)

BALLOUL ET AL.

Examiner

Agnieszka Boesen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7 and 10-25 is/are pending in the application.
- 4a) Of the above claim(s) 7, 16, 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 10-15, 18, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Amendment filed August 21, 2006 in response to the Office Action on May 19, 2006 is acknowledged and has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Specification

The objection to the specification for containing an embedded hyperlink is withdrawn in view of Applicant's amendments.

Claim Rejections - 35 USC § 112

The rejection of claims 1-3, 5, 6, 10-15, 18, 24, and 25 under 35 U.S.C. 112, first paragraph, as failing to comply with enablement requirement **is maintained**.

The claims stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with enablement requirement because the current specification does not provide guidance as to how the viral particle with infection specificity for target cells such as tumor cells expressing molecules such IL-2, GRP, TNF, Fas receptor, CD40 receptor and other, will infect target cells more efficiently than non-target cells, such as normal cells. Applicant argues that the claims do not recite that the viral particle is prevented from infecting normal cells. Examiner agrees that the claims do not recite that the viral particle is prevented from infecting normal cells. Applicant also argues that the particle is engineered to infect target cells more efficiently than non-target cells. With this argument Applicant confirms that the currently claimed viral particle preferentially infects target cells as opposed to non-target cells. The current claims are drawn to a viral particle

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having targeted infection specificity towards target cells such as tumoral cells. Because the poxviral particle, in addition to infecting tumor cells, can also infect the non-target cells such as normal cells, the poxviral particle of the current invention does not have the claimed targeted infection specificity. Because the claimed viral particle, with infection specificity towards target cells such as tumor cells, can also infect normal cells, and because the current specification does not provide guidance as to how the viral particle with infection specificity for tumor cells will spare infecting normal cells the rejection is maintained.

Claim Rejections - 35 USC § 102

The rejection of claims 1, 2, 10-12, 18, and 25 under 35 U.S.C. 102(b) as being anticipated by Collado et al. (Vaccine, July 2000) of record in the Office action of January 24, 2006 is **withdrawn** in view of Applicant's arguments of April 24, 2006.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnieszka Boesen whose telephone number is 571-272-8035. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

Agnieszka Boesen, Ph.D.
Examiner

10/31/06

Stacy B. Chen 10/31/06
STACY B. CHEN
PRIMARY EXAMINER